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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/691,159	10/19/00	CONCIALDI	J 9000.002

QMO1/0717  
LINIAK, BERENATO, LONGACRE & WHITE  
SUITE 240  
6550 ROCK SPRING DRIVE  
BETHESDA MD 20817

EXAMINER	
LEE, K	
ART UNIT	PAPER NUMBER
3753	

DATE MAILED: 07/17/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/691,159

Applicant(s)

Concialdi

Examiner

KEVIN LEE

Art Unit

3753



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14, and 15 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6 20) ☐ Other:

Art Unit: 3753

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following recitations lack antecedent basis: "said diaphragm element" and "said tubular element" in claim 4 and "said tubular element" in claims 6 and 7. In claim 8, "said first and second said ends" is awkwardly stated and should read "said first and second ends."

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ericson. The patent to Ericson discloses a relief valve comprising a first tubular member (16) having walls including apertures (21), the apertures being covered by a valve member (13) which is readable as

Art Unit: 3753

a resilient diaphragm, see Figures 1 and 3. The valve member (13) is moved under vacuum to open the apertures, col. 5, lines 26-43.

Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ciochetti. The patent to Ciochetti discloses a relief valve comprising a first tubular member (26) having walls including apertures (32), the apertures being covered by an elastomeric diaphragm (30), col. 3, lines 56-61.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 6-8, 10, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ericson in view of Horner, Jr. The relief valve of Ericson has built-in filter means (14, 15) to prevent foreign objects from passing through the fluid passageway (12), col. 5, lines 26-67. The relief valve of Ericson lacks only being used within an intake tract of an I.C. engine. The patent to Horner, Jr. teaches using a pressure relief valve within an intake tract of an I.C. engine, col. 2, lines 54-67. In view of the teaching of Horner, Jr., it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the pressure relief valve of Ericson within an intake of an I.C. engine to provide the intake of the engine with a relief valve

Art Unit: 3753

having built-in filter means to prevent foreign objects from passing through the fluid passageway and about the apertures.

Claims 1-3, 6-11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horner, Jr. in view of Ericson. The patent to Horner, Jr. teaches a vacuum-actuated valve (34) connected to the intake of a I.C. engine, col. 2, lines 54-67. The valve of Horner, Jr. lacks having a resilient diaphragm valve to control the flow of fluid through the aperture about the valve seat. The patent to Ericson teaches the above exception in providing a vacuum-actuated valve including a resilient diaphragm element (13), the valve including filter means (15, 16) and collars (31, 35). In view of the teaching of Ericson, it would have been obvious to one of ordinary skill in the art to replace the vacuum-actuated valve of Horner, Jr. with the diaphragm valve of Ericson as an alternate means of controlling fluid flow through the intake of the I.C. engine.

Claims 1-4 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horner, Jr. in view of Ciochetti. The patent to Horner, Jr. teaches a vacuum-actuated valve (34) connected to the intake of a I.C. engine, col. 2, lines 54-67. The valve of Horner, Jr. lacks having a resilient diaphragm valve to control the flow of fluid through the aperture about the valve seat. The patent to Ciochetti teaches the above exception in providing a resilient diaphragm element (30), the valve including a support means (34) to bolster the resiliency of the diaphragm element. In view of the teaching of Ciochetti, it would have been obvious to one of ordinary skill in the art

Art Unit: 3753

to replace the vacuum-actuated valve of Horner, Jr. with the diaphragm valve of Ciochetti as an alternate means of controlling fluid flow through the intake of the I.C. engine.

*Allowable Subject Matter*

4. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.


Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Liao is cited for the additional showing of a vacuum-actuated valve for the intake of an I.C. engine.

Any inquiry concerning this communication should be directed to KEVIN LEE at telephone number (703) 308-1025. The fax number is (703) 308-7766.

JULY 12, 2001

  
Kevin Lee  
Primary Examiner